

DAVID MCGINNIS

IBLA 82-678

Decided June 8, 1982

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 124050, N MC 124051, and N MC 124057 through N MC 124062.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Where the owner of an unpatented mining claim fails to file a copy of the proof of labor recorded in the office where the location notice is of record in the proper office of the Bureau of Land Management, prior to Dec. 31 of the year of recording the instrument with the county recorder, the claim is properly deemed abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

APPEARANCES: David McGinnis, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

David McGinnis appeals the March 21, 1982, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Blue Gem #1, Blue Gem #2, and the Thunderbird #1 through Thunderbird #6 lode mining claims, N MC 124050, N MC 124051, and N MC 124057 through N MC 124062, abandoned and void because no notice of intent to hold the claims or a proof of labor was filed with BLM by December 30, 1981, as required by 43 CFR 3833.2.

Appellant states he did file a proof of labor with BLM December 18, 1981, for which BLM sent a receipt. However, upon checking his records, he concedes that his filing on December 18, 1981, was a copy of the proof of labor for 1980, which had been filed with BLM December 11, 1980. With his appeal, he sent correct copies of the 1981 proof of labor as recorded August 31, 1981, in Esmeralda County, Nevada.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires that a notice of intent to hold the mining claim or evidence of assessment work be filed for record with the county where the location notice is of record, and a duplicate of the instrument be filed in the proper office of BLM prior to December 31 of each year. Failure to file timely the instrument both in the county and with BLM shall be deemed conclusively to constitute an abandonment of the claim by the owner.

In this case, appellant did not file with BLM prior to December 31, 1981, a copy of the instrument recorded in Esmeralda County August 31, 1981. Consequently he was not in compliance with the requirements of FLPMA, and BLM correctly declared the claims to be abandoned and void.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

